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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1408

DANDO ENTERPRISES, LTD.,

Petitioner,

vs.

JOSEPH H. PRITCHETT, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND MOTION FOR DAMAGES

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**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI**

**TO THE HONORABLE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:**

Respondents, Joseph H. Pritchett, Vivian M. Pritchett,
Margaret Ann Pritchett, Charles J. Oldham, Roma M. Old-
ham and Mike Oldham respectfully pray the Court to deny
the requested Writ of Certiorari.

REASONS TO DENY THE WRIT

The Petition herein overlooks and fails to point out that the Eighth Circuit Court of Appeals, in its Opinion, did, in fact, examine the record and make the determination contended for. Petitioner contends that there must be a finding that "someone in the managerial hierarchy of the corporate owner, participated in the fault or act of negligence causing or contributing to the injury suffered." Petition for Writ, page 15. In Footnote 22 the United States Court of Appeals for the Eighth Circuit states:

22. Recreation is also chargeable with knowledge that such entrustment was negligent for, as in the case of Kimberling, it had knowledge (through its vice president, Scott Clifton's father) concerning Scott's very young age, poor school record, inadequate training, and "very limited" experience; also, there was common knowledge of the natural inclination of teenage boys to impress their teenage friends by running powerful motorboats at a high rate of speed.

Petition for Writ, page A-20. "Recreation" is Recreation Unlimited, Inc., known as such before its name changed to Dando Enterprises, Ltd.

The Eighth Circuit Opinion also found that Frank Clifton was vice president of both Kimberling Cove, Inc. and Recreation Unlimited, Inc.; that Frank Clifton was solely on the payroll of Recreation Unlimited, but that he occasionally oversaw Kimberling Cove's marina manager and, at the time of the accident, performed general office duties for Kimberling Cove. Petition for Writ, page A-17.

There never was any dispute about Frank Clifton's relationship to Recreation Unlimited, Inc., now Dando Enterprises, Ltd. In the Brief of Appellee Recreation Unlimited, Inc., filed in the Eighth Circuit Court of Appeals Petitioner here stated:

Frank Clifton was vice president of both Kimberling Cove, Inc. and Recreation. Clifton was paid a salary by Recreation and received no remuneration from Kimberling Cove, Inc. Clifton devoted his *full time* to the activities of Recreation, selling boats and *managing the affairs of Recreation*. (Appellee's Brief, page 38) (Emphasis added)

Frank Clifton was the general manager of Recreation Unlimited, Inc. and, as such, devoted full time to the conduct of the business of Recreation Unlimited, Inc. Frank Clifton supervised the day-to-day activities of Recreation Unlimited, Inc. Appellee's Brief, page 9.

Also, the Eighth Circuit Court of Appeals made the following finding in its Opinion:

Kimberling, through the marina manager and with the knowledge of Frank Clifton (Scott's father), who was the vice president of Kimberling and exercised overall supervision of the marina, entrusted Scott Clifton with a key to the dockhouse, where keys to approximately 175 boats at the marina were kept. On the night of the collision, Scott Clifton obtained a key to the Classic motorboat from the dockhouse by using the key entrusted to him. Thus, there was an effective entrustment to Scott Clifton of the Classic motorboat. Petition for Writ, page A-10.

CONCLUSION

The analysis of the Opinion of the Eighth Circuit Court of Appeals in this action clearly shows that it followed the Opinions of this Court in reaching its conclusion. The sole complaint made by Petitioner is that there was no finding that "someone in the managerial hierarchy" of Recreation Unlimited, Inc., now Dando Enterprises, Ltd., participated in the fault or act of negligence. In fact there was such a finding and the complaint is without basis.

WHEREFORE, Respondents respectfully pray that the Petition for a Writ of Certiorari be denied.

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MOTION FOR DAMAGES UNDER RULE 56

Come now Respondents and respectfully state to the Court that:

1. The filing of the Petition for Writ of Certiorari has delayed the mandate of the Eighth Circuit Court of Appeals and the entry of judgment in favor of Respondents.

2. Petitioner's reasons supporting its Petition for Writ of Certiorari herein are wholly without foundation and Petitioner fails to cite findings of the Eighth Circuit Court of Appeals mentioned in its Opinion which were contradictory to Petitioner's position herein, as shown by Respondents' Brief in Opposition to the Petition herein. For that reason it appears there is no ground for granting the requested Writ.

By reason of the filing of the Petition herein, Respondents have suffered the delay of the collection of their judgments and of interest on said judgments during the delay.

WHEREFORE, Respondents pray the Court for reasonable damages, under Rule 56, for their costs herein and for

such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

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